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Attorneys for Defendant Fremont Reorganizing Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JUSTIN JAMES and NICOLE JAMES,

Plaintiffs,

vs.

FREMONT REORGANIZING COMPANY, fka
FREMONT INVESTMENT & LOAN
COMPANY, a California Corporation; BRIDGE
CAPITAL CORPORATION, a California
Corporation, HSBC BANK USA, NA, a national
banking association

Defendants.

Case No. 3:08-CV-397-BR

FREMONT REORGAINIZING
COMPANY'S ANSWER AND
AFFIRMATIVE DEFENSES TO THE FIRST
AMENDED COMPLAINT

COMES NOW Fremont Reorganizing Company ("Fremont"), Defendant, in answer to
Plaintiffs' amended complaint, admits, denies and alleges as follows:

1.1 Fremont is without knowledge or information sufficient to form a belief as to the
truth of the allegations of paragraph 1 of Plaintiffs' Amended Complaint and therefore denies
those allegations.

1.2 Answering paragraph 3, Fremont admits that this court has jurisdiction.

1.3 Fremont admits that the Jameses are natural persons who own real property

FREMONT REORGANIZING COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' FIRST AMENDED COMPLAINT - 1
60176-0055-JUD-2

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1 located at 4063 43rd St. NE, Neotsu, OR and 2125 NE 21st, Lincoln City, OR. Fremont is
 2 without knowledge or information sufficient to form a belief as to the truth of the remainder of
 3 the allegations of paragraph 3 of Plaintiffs' Amended Complaint and therefore denies those
 4 allegations.
 5

6 1.4 Answering paragraph 4, Fremont admits the same.

7 1.5 Fremont admits that Defendant Bridge Capital Corporation is a corporation that
 8 was licensed as an Oregon mortgage broker or banker. Fremont is without knowledge or
 9 information sufficient to form a belief as to the truth of the remainder of the allegations of
 10 paragraph 5 of Plaintiffs' Amended Complaint and therefore denies those allegations.
 11

12 1.6 Answering paragraph 6 of Plaintiffs' Amended Complaint, Fremont is without
 13 knowledge or information sufficient to form a belief as to the truth of the allegations, and
 14 therefore denies those allegations.
 15

16 1.7 Answering paragraph 7 of plaintiffs' Amended complaint, Fremont admits that it
 17 is a creditor under TILA and Regulation Z. Fremont denies the remainder of any other
 18 allegations contained in paragraph 7 of the Amended Complaint.
 19

20 1.8 Answering paragraph 8 of plaintiffs' Amended complaint, Fremont denies the
 21 same.

22 1.9 No answer is required from Fremont as to paragraph 9 of plaintiff's Amended
 23 complaint. To the extent that any answer is required, Fremont denies any factual allegations as
 24 to Fremont contained in paragraph 9 of Plaintiffs' Amended Complaint.
 25

26 1.10 Fremont is without knowledge or information sufficient to form a belief as to the
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1 truth of the allegations of paragraph 10 of Plaintiffs' Amended Complaint and therefore denies
2 those allegations.

3 1.11 Fremont is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations of paragraph 11 of Plaintiffs' Amended Complaint and therefore denies
5 those allegations.

6 1.12 Fremont is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations of paragraph 12 of Plaintiffs' Amended Complaint and therefore denies
8 those allegations.

9 1.13 Fremont is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations of paragraph 13 of Plaintiffs' Amended Complaint, and therefore denies
11 those allegations.

12 1.14 Fremont admits only that loan applications were received by Fremont prior to the
13 loans' closing. Fremont is without knowledge or information sufficient to form a belief as to the
14 truth of the remainder of the allegations of paragraph 14 of Plaintiffs' Amended Complaint, and
15 therefore denies those allegations.

16 1.15 Answering paragraph 15 of Plaintiffs' Amended Complaint, Fremont admits only
17 that Bridge was the mortgage broker on these loans. Fremont denies the remainder of the factual
18 allegations contained in paragraph 15.

19 1.16 Answering paragraph 16 of Plaintiffs' Amended Complaint, Fremont admits that
20 it set its own approval conditions for plaintiffs' loans, participated in underwriting them and
21 reviewed plaintiffs' loan applications. Fremont denies the remainder of any other factual
22 allegations contained in paragraph 16.

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FREMONT REORGANIZING COMPANY'S
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1 1.17 Answering paragraph 17 of plaintiffs' Amended Complaint, Fremont admits the
2 same.

3 1.18 Answering paragraph 18 of plaintiffs' Amended complaint, Fremont repeats and
4 incorporates by its answers in all preceding paragraphs as though fully set forth herein.
5

6 1.19 Answering the entirety of paragraph 19, including paragraphs 19A through 19D
7 of plaintiff's Amended complaint, Fremont denies the same.

8 1.20 Fremont is without knowledge or information sufficient to form a belief as to the
9 truth of the allegations of paragraph 20, including paragraphs 20A and 20B, of Plaintiffs'
10 Amended Complaint, and therefore denies those allegations.
11

12 1.21 Answering paragraph 21 of plaintiff's Amended complaint, Fremont denies the
13 same.
14

15 1.22 Answering the entirety of paragraph 22 of Plaintiffs' Amended Complaint,
16 including paragraphs 22A through 22D, Fremont denies the same.

17 1.23 Answering paragraph 23 of plaintiffs' Amended Complaint, Fremont denies the
18 same.
19

20 1.24 Answering paragraph 24 of plaintiffs' Amended Complaint, Fremont denies the
21 same.

22 1.25 Answering paragraph 25 of plaintiffs' Amended complaint, Fremont repeats and
23 incorporates its answers in all preceding paragraphs as though fully set forth herein.
24

25 1.26 No answer is required to paragraph 26 of Plaintiffs' Amended complaint as these
26 allegations are against Defendant Bridge only.
27
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1 1.27 Fremont denies that Plaintiffs are entitled to the relief requested in paragraph 27
2 of Plaintiffs' Amended Complaint.

3 1.28 Answering paragraph 28 of plaintiffs' Amended Complaint, Fremont repeats and
4 incorporates its answers in all preceding paragraphs as though fully set forth herein.
5

6 1.29 Answering paragraph 29 of plaintiffs' Amended complaint, Fremont admits the
7 same.

8 1.30 Answering paragraph 30 of plaintiffs' Amended complaint, Fremont denies the
9 same.
10

11 1.31 Answering paragraph 31 of plaintiffs' Amended Complaint, Fremont admits that
12 plaintiffs sent Fremont a letter dated February 26, 2008 and that the letter speaks for itself.
13 Fremont denies the remainder of the allegations in paragraph 31 of Plaintiffs' Amended
14 Complaint, for lack of knowledge.
15

16 1.32 Fremont denies that Plaintiffs are entitled to the relief requested in paragraph 32,
17 including paragraphs 32A through 32 C of Plaintiffs' Amended Complaint.

18 1.33 Fremont denies the Plaintiffs' prayers for relief in their entirety.
19
20

21 AFFIRMATIVE DEFENSES

22 FURTHER ANSWERING and by way of affirmative defense, Fremont alleges as
23 follows:
24

25 2.1 The Complaint fails to state a claim upon which relief can be granted.

26 2.2 Plaintiffs' claims are barred by the doctrine of estoppel.

27 2.3 Plaintiffs' claims are barred by the doctrine of waiver.
28

FREMONT REORGANIZING COMPANY'S
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1 2.4 Plaintiffs' claims are barred by the doctrine of voluntary payment.

2 2.5 Plaintiffs' damages, if any, are the result of plaintiffs' own acts or omissions in
3 failing to take reasonable steps to protect their own interests.
4

5 2.6 That Plaintiffs have failed to mitigate their damages, if any.

6 2.7 That Plaintiffs' damages, if any, were caused by the acts or omissions of parties
7 other than Fremont and Fremont places the liability of those parties at issue for the purposes of
8 determining comparative fault.
9

10 The above defenses and affirmatives defenses are based on the facts currently known to
11 Fremont. Fremont reserves the right to amend or add defenses or affirmative defenses based on
12 facts later discovered, pled or offered.
13

14 COUNTERCLAIM

15 FURTHER ANSWERING and by way of counter claim, Fremont alleges as follows:

16 3.1 That the notes and deed of trusts in question provide for reimbursement of attorneys
17 fees and costs incurred in defending Fremont's rights in the property foreclosed.

18 3.2 That Fremont should be reimbursed their attorneys fees and costs incurred in
19 defense of this case.
20

21 RESERVATION OF COUNTERCLAIMS/CROSS-CLAIMS 22 AND THIRD-PARTY CLAIMS

23 4.1 Defendant Fremont Reorganizing Company hereby reserves the right to bring any
24 additional counterclaims, cross-claims, and/or third-party claims against any party hereto.

25 PRAYER FOR RELIEF

26 WHEREFORE, having fully answered plaintiff's complaint the Fremont prays for relief
27 as follows:
28

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1 5.1 That Plaintiffs' complaint be dismissed with prejudice;

2 5.2 That Fremont be awarded reimbursement of its attorneys fees and costs incurred in
3 this case;

4
5 5.3 That the court grant such other and further relief as the court may deem just.

6 DATED this 13th day of April, 2009.

7
8 /s/ Lisa McMahon-Myhran

9 Lisa McMahon-Myhran, OSB #00084

10 ROBINSON TAIT, P.S.

11 Attorneys for Defendant Fremont Reorganizing Company
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON April 13, 2009, I served a true and correct copy of the attached DEFENDANT FREMONT REORGANIZING COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES TO THE FIRST AMENDED COMPLAINT, by MAIL to the attorneys whose address appears below:

Hope A. Del Carlo
921 SW Washington, Suite 516
Portland, OR 97205

Mark E. Griffin
R. Bradley Griffin
Griffin & McCandlish
215 SW Washington St., Suite 202
Portland, OR 97202

Of Attorneys for Plaintiffs

Dated this 13th day of April, 2009

By: /s/ Lisa McMahon-Myhran

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Of Attorneys for Defendants